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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 SNOHOMISH COUNTY,

11 Plaintiff,

12 v.

13 ALLIED WORLD NATIONAL  
14 ASSURANCE COMPANY, et al.,

15 Defendants.  
16

CASE NO. C16-63 BJR

ORDER DENYING ICSOP'S  
MOTION FOR SUMMARY  
JUDGMENT RE: STARR  
INDEMNITY & LIABILITY  
COMPANY

17 **I. Introduction**

18 This matter is before the Court on cross-motions for summary judgment between Plaintiff  
19 Snohomish County ("the County") and Defendant The Insurance Company of the State of  
20 Pennsylvania ("ICSOP"). Additionally, ICSOP sought summary judgment against Defendant and  
21 Cross-claimant Starr Indemnity and Liability Company ("Starr") and Starr filed a response to that  
22 request. The dispute centers around whether ICSOP owed a duty to defend the County against a  
23 series of lawsuits in the wake of a catastrophic landslide in 2014.  
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1 This order is solely concerned with that portion of ICSOP's motion which seeks summary  
2 judgment against Starr. Having reviewed the parties' briefing, the relevant case law, and the entire  
3 record, the Court will deny ICSOP's motion for summary judgment against Starr. The Court's  
4 reasoning follows:

## 5 **II. Background**

6 On March 22, 2014, in Snohomish County, the town of Oso was the scene of a  
7 catastrophic mudslide that wreaked havoc on lives and property. The number of deaths, personal  
8 injuries, and destruction to homes and other property resulted in four lawsuits (hereinafter the  
9 "underlying lawsuits"). The underlying lawsuits are *Pszonka v. Snohomish County* (King Co. Sup.  
10 Ct. No. 14-2-18401-8-SEA; "*Pszonka*"); *Ward v. Snohomish County*, King Co. Sup. Ct. No. 14-2-  
11 2955-4-SEA; "*Ward*"); *Regelbrugge v. State of Washington*, King Co. Sup. Ct. No. 15-2-01672-  
12 5-SEA ("*Regelbrugge*"); *Lester v. Snohomish County*, King Co. Sup. Ct. No. 15-2-02908-6-SEA  
13 ("*Lester*").

14 ICSOP is a "first-layer" excess insurer (whose duty to cover and defend the insured begins  
15 when the County exhausts its self-insured retention, or "retained limit"). Starr has filed a cross-  
16 claim against ICSOP asserting rights of contribution and equitable contribution based on the fact  
17 that Starr accepted the County's tender of defense while ICSOP thus far has not. (*See* Dkt. No.  
18 38, Starr's Answer and Defenses to the Complaint and Cross-Claim at ¶ 3.)

19 On September 14, 2016, the underlying lawsuits against the County were dismissed. (Dkt.  
20 No. 204, Declaration of Meyers, Exs. 1, 2.) The dismissal of the underlying litigation is currently  
21 on appeal. (Dkt. No. 200, Declaration of Genster at ¶ 3.) The County seeks reimbursement from  
22 ICSOP of defense costs incurred in the now-dismissed lawsuits, along with defense costs that will  
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1 be incurred during the appeal and (should the appeal be successful) in defending against future  
2 proceedings.

### 3 **III. Discussion**

#### 4 **A. Legal standards**

5 Summary judgment is proper “if the movant shows that there is no genuine issue as to any  
6 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).  
7 The moving party bears the initial burden of demonstrating the absence of a genuine issue of  
8 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In deciding a summary  
9 judgment motion, the court must view the evidence in the light most favorable to the non-moving  
10 party and draw all justifiable inferences in its favor. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242,  
11 55 (1986).

12 The moving party is only required to assert that the party with the burden of proof cannot  
13 carry that burden, and “that there is an absence of evidence to support the nonmoving party’s case.”  
14 *Celotex*, 477 U.S. at 325. On those issues where it bears the burden of proof, the non-moving party  
15 must present actual evidence to successfully oppose the motion and may not rest on allegations,  
16 speculations or opinion. *Anderson*, 477 U.S. at 248.

#### 17 **B. ICSOP Summary Judgment Motion Against Starr**

18 The Court has already entered an order on the cross-motions between the County and  
19 ICSOP, granting summary judgment to the County and denying it to ICSOP. (*See* Dkt. No. 235,  
20 Order Granting Motion for Summary Judgment by Snohomish County and Denying Motion for  
21 Summary Judgment by The Insurance Company of the State of Pennsylvania.) To the extent  
22 relevant, the Court incorporates that ruling herein by reference.

1 Defendant Starr Indemnity & Liability Company (“Starr”) has asserted a cross-claim for  
2 contribution and equitable contribution against Defendant ICSOP in this litigation. (Dkt. No. 38.)  
3 On the final page of its motion for summary judgment, ICSOP appended a single paragraph which  
4 it entitled “The Court Should Grant Summary Judgment Dismissing Starr’s Cross-claim.” (Dkt.  
5 No. 202, ICSOP Motion at 30.)

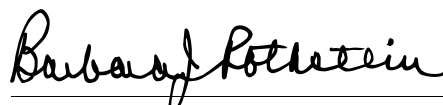
6 ICSOP listed a single ground for dismissal of the cross-claim: “An insurance company has  
7 no right to seek contribution from another insurance company that owes no obligation to the  
8 insured.” (*Id.*; *citation omitted.*) Of necessity, the Court’s grant of summary judgment in favor  
9 of the County refutes the argument that ICSOP owed no obligation to the County and requires that  
10 ICSOP’s request for summary judgment against Starr be denied.

#### 11 IV. Conclusion

12 Having already found that ICSOP has a duty to defend the County and is currently in breach  
13 of that duty, the Court rejects ICSOP’s argument that Starr has no right to seek contribution from  
14 it because it owes no obligation to the County. On that basis, ICSOP’s motion for summary  
15 judgment against Starr is denied.

16 The clerk is ordered to provide copies of this order to all counsel.

17 Dated: August 18, 2017.

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20 Barbara Jacobs Rothstein  
21 U.S. District Court Judge  
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